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Theodore D. Frank
Tel: 202 857-6016
Fax: 202 857-6395
E-mail: frankt@arentfox.com
http://www.arentfox.com

March 3, 1997

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 95-176

Dear Mr. Caton:

On behalf of the Georgia Public Telecommunications Commission, submitted herewith are:

1. An original and six copies of its Comments in the above-referenced proceeding.
2. A 3 ½ inch computer disk with a copy of the Comments in WordPerfect 6.0.
3. An original and six copies of a Request for Leave to File Comments One Business Day Late.

If there are any questions concerning these submissions, please let me know.

Sincerely yours,

Theodore D. Frank
Counsel for Georgia Public
Telecommunications Commission

Enclosures

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New York, NY • McLean, VA • Bethesda, MD • Budapest, Hungary • Jeddah, Kingdom of Saudi Arabia

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 3 1997

COMMUNICATIONS SECTION

In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)

MM Docket No. 95-176

To: The Commission

**REQUEST FOR LEAVE TO FILE
ONE BUSINESS DAY LATE**

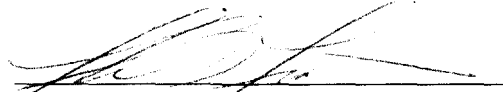
The Georgia Public Telecommunications Commission ("GPTC") hereby requests leave to file its Comments in the above-captioned proceeding one business day late. The Comments were originally due last Friday, February 28, 1997. The Comments were prepared in time for filing. However, due to a power outage caused by lightening striking a transformer at GPTC's headquarters, counsel for GPTC was unable to contact any senior official of the GPTC after noon on Friday, when the final draft of the Comments was ready. Since some changes had been made in that document which had not been reviewed by the GPTC, counsel did not believe it appropriate to file the Comments until the appropriate officials at the GPTC had seen the final draft.

That review has now been completed and the GPTC requests leave to file its Comments out of time. Grant of this request will permit the Commission to consider the views of a major producer of instructional television programming and the operator of a state educational

television network. Since these comments are being filed only one business day after the initial due date, no one will be prejudiced by grant of this request. Indeed, a computer disk of the comments is being submitted with this filing which will permit the Commission to post the comments on its Home Page, thereby making the Comments available virtually immediately.

Accordingly, the GPTC hereby requests that the Commission grant this request and accept its comments in this proceeding.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Theodore D. Frank', written over a horizontal line.

Theodore D. Frank
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Georgia Public Telecommunications
Commission

March 3, 1997

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Before the
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Washington, D.C. 20554

In the Matter of)	
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To: The Commission

**COMMENTS OF THE
GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION**

Theodore D. Frank
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for Georgia Public Telecommunications
Commission

March 3, 1997

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To: The Commission

**COMMENTS OF THE
GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION**

The Georgia Public Telecommunications Commission ("GPTC") submits these Comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.^{1/}

Summary of Comments

The GPTC supports Congress' goal of making television available to the hearing impaired and applauds the Commission's proposal to phase-in the closed-captioning requirement over a reasonable period of time. By phasing in the captioning obligation, the Commission will permit the GPTC and other broadcasters to adapt to the new requirement.

The GPTC is concerned, however, about the suggestion that instructional programming might be subject to the closed-captioning requirement. No such regulatory obligation is

^{1/} Submitted simultaneously herewith is a Request for Leave to File One Business Day Late.

necessary to assure the captioning of instructional programming. There are many educational reasons to include captions in instructional programming, and the GPTC believes that the educational community will cause that programming to be closed captioned. By allowing the educational community to decide when and how much instructional programming will be captioned, the Commission will permit educators to balance the costs of captioning against the educational needs served by closed captions and the resources available to produce instructional programming.

In all events, the Commission should not require that instructional programming produced prior to the effective date of the captioning rules ("library programming" or "library programs") be captioned. The cost of captioning that programming will severely tax the resources of instructional program producers and of educators who use instructional programming. Any requirement to caption that programming, even if phased-in over a period of time, is likely to cause the loss of valuable instructional programming or divert limited educational funds from other, more important, instructional programming.

Introduction

GPTC is an agency of the State of Georgia charged with making public and educational broadcasting and other educational telecommunications services available to the residents of the State. It is the licensee of nine noncommercial educational television stations and twelve noncommercial educational television translators serving virtually the entire State of Georgia. These television stations form the Georgia Public Television Network which is operated by the GPTC and which provides public television programming and instructional programming to

residents and schools throughout the State. In addition, the GPTC provides instructional programming by satellite to schools throughout Georgia and elsewhere in the U.S.

The GPTC currently broadcasts 10 hours per week of instructional programming over its noncommercial educational television stations for use in schools throughout the State and distributes an additional 50 hours per week by satellite to schools in Georgia and other states. While the GPTC acquires a substantial portion of its instructional programming from other sources, it is also a major producer of instructional programming, producing instructional program series for a number of foreign language, science, mathematics, economics and a wide array of other courses. During the past five years, GPTC has produced over 120 hours of instructional programming. The GPTC also produces and broadcasts over its television stations administrative and other in-service programs designed to assist teachers in the public schools in Georgia with respect to educational matters.

Argument

I. The Commission Should Phase-In The Captioning Requirement and Should Minimize The Obligation To Caption Library Programs

The GPTC, and public television in general, is committed to the closed captioning of programming intended for a general audience. As the Association of Public Television Stations ("APTS") notes in its Comments in this proceeding, public television played a major role in developing the closed-captioning technology and in making closed-captions available to the hearing-impaired. The GPTC currently captions a substantial portion of its own programs and much of the nationally-distributed programs it broadcasts are also closed captioned.

Given its limited budget and the costs of captioning, the GPTC supports that the Commission's proposal to phase-in the requirement to caption new programming over eight years. The GPTC believes that phasing in the obligation will permit most public television licensees to accommodate the requirement without undue disruption.^{2/} Imposing a more rapid obligation to caption will strain the resources available to provide the captions and escalate captioning costs. Requiring captioning in shorter time frame is also likely to result in producers using less desirable and attractive captioning techniques in order to reduce costs, thereby reducing the value of the captions to the hearing impaired.

While the GPTC supports the Commission's proposals with respect to the captioning of new programming, it urges the Commission to tread carefully on any obligation to caption library programming, lest the cost of captioning deprive the public of historical material and programs with substantial public interest benefits. Since most general audience programs currently in inventory are likely to have a decreasing interest during the phase-in period, the impact of treading lightly on the obligation to caption library programming will not have a long-term impact on the amount of programming accessible to the hearing impaired. On-the-other-hand, a rigid captioning obligation is likely to chill the use of desirable library programs where the licensee must pay to have them captioned.

^{2/} As APTS argues in its Comments, however, smaller public television stations may find the requirement to caption their local programming unduly burdensome and could reduce the amount of locally produced programming available in those markets. Accordingly, the GPTC supports APTS request that the Commission exempt small public television stations from the requirement to caption locally-produced programs.

Rather than requiring a certain percentage of library programs be captioned, the Commission might phase-in an obligation that licensees caption all their non-exempt programming in addition to the phase-in requirement for new programming. The percentages applicable to all non-exempt programs must be lower than the percentage applicable to new programs so that licensees can broadcast desirable and important library programs which are not captioned,^{2/} and to avoid imposing the costs of captioning library programs on independent stations and others which rely on syndicated and off-network material. In addition, the phase-in period for library programs should be longer than for new programs in order to encourage the captioning of new programs. However, this approach would permit licensees to exercise their editorial judgment to broadcast library programs that might not be captioned when the licensee believes that the broadcast of the programs will serve the public interest. If a general audience library program is still in use ten or twelve years after the Commission adopts rules in this proceeding, the program would have demonstrated its staying power, thereby justifying the requirement that it be closed captioned.

^{2/} For example, if the Commission adopts the eight year phase-in proposal, it could require that 15% of all non-exempt programs be captioned by the end of the second year, 35% by the end of the fourth year, 60% by the end of the sixth year, and 80% by the end of the eighth year, and 100% by the end of the tenth year. A more gradual phase-in should be employed if a longer phase-in period is adopted..

II. The Commission Should Not Require The Captioning Of Instructional Programming

In the *Notice*, the Commission proposed to exempt local and regional instructional programming from any captioning requirement, but sought comment on that position and with respect to whether nationally distributed instructional programming should be closed captioned. The Commission suggests that the captioning obligation might be more appropriately imposed on nationally distributed programming since that programming “maybe prerecorded and have repeated showings.” *Notice* at ¶ 76. The GPTC urges the Commission not to impose any captioning requirement on instructional programming, but to allow the educational community to determine the extent and nature of the captioning obligation. The Commission can revisit the issue at a later date if it appears that reliance on the educational community has not produced instructional programming which serves the needs of the hearing-impaired. However, if the Commission decides to require that instructional programming be closed captioned, it should not impose that requirement on library instructional programming.

A. The Commission Should Allow the Education Community To Decide When And How Much Instructional Programs Should Be Closed Captioned

As the Commission recognized in its *Notice*, instructional programming is produced with limited budgets and the added costs of captioning the programming will affect the quantity or the quality of the instructional programming. Thus, the GPTC supports the Commission’s proposal to exempt locally produced and distributed instructional programming from the captioning requirement. In exempting that programming, the Commission should make it clear that instructional programs produced by state networks, such as the GPTC, and by consortia of

stations for their own use should be deemed locally produced. These programs are designed for the specific needs of the licensee or licensees and the schools using the instructional programming. As such they are "local" programs and the costs of captioning would constitute an "undue burden" on the program producers. Similarly, in-service programs should not be subject to any captioning requirement. That programming is not intended for the general audience, but for a limited targeted audience and the costs of captioning would materially impair the producer's ability to offer them.

The GPTC also believes that instructional programming which is distributed nationally or regionally should be exempt from any captioning obligation. The producers of these programs face economic constraints which are similar to those faced with respect to locally produced instructional programs. School systems and other users of instructional programming operate with restricted budgets and programming produced for their use must be produced with those limited budgets in mind. Thus, all producers of instructional programs face budgetary restrictions and any captioning obligation will affect the variety, quality and quantity of instructional programs. Further, except for programming designed for the local market, such as local history or geography programs and college courses created for a specific college or university system, most instructional producers attempt to market their programs to others. Consequently, there is little instructional programming that is not at least offered for more-than-local use, and any obligation to caption programming distributed nationally is likely to impact most, if not all, producers of instructional programming. Thus, the GPTC does not believe it is realistic to adopt

different closed-captioning rules for locally-produced programs and for nationally-distributed programs.^{4/}

Moreover, Commission action is not required to assure that instructional programming will be made accessible to the hearing impaired. A substantial and increasing portion of the instructional programming currently being produced is currently closed captioned, and there is a growing consensus in the educational community that closed captions serve a variety of educational purposes in addition to making programming accessible to the hearing impaired.^{5/} Some school systems and public television stations require that any instructional programming they acquire be closed captioned and others encourage the closed-captioning of programming.^{6/} As a result, the marketplace is moving towards assuring the captioning of instructional programming and Commission action is not required to achieve the goals of Section 713 of the Communications Act with respect to that programming.

^{4/} Moreover, the fact that nationally distributed programs are prerecorded and might be broadcast repeatedly does not warrant treating that programming differently, as the Commission implies, *see, Notice* at ¶ 76, since virtually all instructional programming is taped and is used repeatedly.

^{5/} For example, captioning is frequently helpful for students with reading problems, the elderly, individuals for whom English is a second language and others whose reading ability is limited.

^{6/} Station KCPT, Kansas City, is requiring the captioning of all its instructional programming and will not acquire instructional programming that is not captioned. In addition, Southern Educational Communications Association has been actively working with stations and encouraging the captioning of programming. A Closed Captioning Committee, with representatives of a number of stations, instructional television directors and others, has been formed with its assistance to facilitate the captioning of instructional programs.

Indeed, as distinguished from programming intended for a general audience, instructional programming is designed for a targeted audience and for specific, limited educational purposes. Thus, the policy considerations which warrant the captioning of general audience programming do not apply with equal force to instructional programming, and there are other considerations applicable to instructional programming, such as assuring that the captions further the educational objective of the programming. For example, there may be little need to caption programs for grade levels where students can't read. By allowing the educational community to determine the level of captioning and what kinds of programming should be captioned, the Commission will allow producers of educational programming to balance the educational objectives of the programming, the production values needed to assure those educational goals and the added costs of captioning in a manner that maximizes the educational value of the programming.

As the Commission is well aware, the financial resources available for education are limited and the funds available for instructional programming are similarly constrained. Although instructional programming has a longer shelf-life than general-audience programming and thus fewer new episodes or programs must be produced annually, instructional programming must be updated and revised periodically, just as textbooks and course curricula. Any obligation to caption imposed from outside the educational community will interfere with the ability of

producers to strike the proper balance among the factors unique to instructional programming and to use the limited resources available for education in a consistent and coordinated manner.^{2/}

Leaving the captioning obligation to the education marketplace will permit these various concerns to be balanced in an efficient environment which is responsive to the importance of captioning programs. The Commission can, of course, review the situation at a later date to see if this approach is working and the instructional programming need of the hearing-impaired community is being adequately served.

**B. In All Events, The Commission Should Not Require
The Closed-Captioning Of Library Instructional Programming**

If the Commission should conclude that some captioning requirement should be imposed on instructional programming, no captioning obligation should attach to library instructional programming. As indicated above, instructional programming has a substantially longer shelf-life than general audience programming and many instructional programs are used for eight to ten to twelve years. Consequently, there is a large inventory of instructional television programs that are currently being used but which is not captioned. Requiring the closed captioning of that programming will impose a substantial cost on educators and public television licensees, and is likely to deprive students of excellent, older programming which the station or school system cannot afford to caption.

^{2/} In that regard, the GPTC notes that the amount of federal funds for closed captioning of instructional programming is decreasing. Consequently, the costs of any federal obligation to caption this programming will have to be funded from other sources--primarily State and local educational funds.

The GPTC currently has an inventory of approximately 1050 instructional programs ranging in length from 10 to 90 minutes which are not captioned. In total, there are over 540 hours of uncaptioned instructional material in its library. Other public television stations unquestionably have similar stocks of uncaptioned instructional programs. Using the Commission's estimate of the costs of captioning an hour of programming, the costs of captioning those programs using the Commission's estimates would range from \$432,000 to \$1.35 million. Based on the GPTC's current costs for captioning its programming, captioning the 1,050 instructional programs would total more than \$730,000. The GPTC's budget for instructional programming could not absorb these costs -- which range from over 25% to over 65% of that budget -- without a material diminution in the quantity and quality of the instructional programming and related support services it provides,^{8/} even if the costs were spread over a number of years.

These costs are only a fraction of the total costs the educational community would have to bear, since they would have to be multiplied by the number of public television stations which have similarly sized inventories of instructional programming. While the Commission suggests in paragraph 60 of the *Notice* that the market may take various steps to facilitate the captioning of library programming, those steps will not -- even if they come to fruition -- materially reduce the overall costs of captioning the existing library of instructional programming. First, the existing inventory of instructional programs would still have to be captioned -- at a total cost

^{8/} The production of instructional programming involves more than the cost of program production. Instructional materials for use in the classroom, teacher guides, CD roms, software on the producer's Home Page, and other assorted material must also be produced. These additional items typically amount to 25% of the overall costs of an instructional television program.

many times the estimates given above since the GPTC's inventory is only a small fraction of the existing inventory in the country. Second, stations would have to devote the resources and manpower required either to encode the captions on their existing stock of programs or to have technicians on hand to run the captions whenever an uncaptioned program is broadcast. Those costs are not insubstantial when the pay of technicians and the tape stock is counted. In addition, synchronizing the broadcast of captions when an uncaptioned program is broadcast entails administrative and practical problems which make the Commission's suggestions problematic at best.

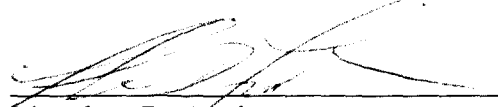
Accordingly, the GPTC urges the Commission not to require the captioning of library instructional programming, even if it concludes that new nationally-distributed instructional programs should be captioned. The costs of captioning library programs will substantially burden public television licensees and educators and the requirement is likely to result in the loss of attractive, effective instructional programming. As such, it is an undue burden within the meaning of Section 713 -- a result which Congress has directed the Commission to eschew.

Conclusion

For the reasons set forth above, the GPTC urges the Commission not to impose any captioning requirement on instructional programming, but to allow the educational community to decide the level and pace at which instructional programs will be captioned. In all events, however, the Commission should not require library instructional programs to be closed

captioned; the costs will unduly burden the public television and educational community and is likely to deprive students of desirable educational programming.

Respectfully submitted

A handwritten signature in dark ink, appearing to read 'Theodore D. Frank', is written over a horizontal line.

Theodore D. Frank
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Georgia Public Telecommunications
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